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tendered for shipment. See 13 MICH. L. REV. 590. While the Federal Rule has been adopted by a number of states in cases of intra-state shipments, the South Carolina Rule still prevails in some states in the case of intra-state shipments. *Hill v. Adams Express Co.*, 82 N. J. L. 373; *Hughes v. Pa. Ry. Co.*, 202 Pa. 222; *Chicago, Milwaukee & St. Paul Ry. v. Solan*, 169 U. S. 133.

CARRIERS—LIABILITY UNDER EXEMPTION CONTRACT FOR INJURIES TO PULLMAN EMPLOYEES.—Plaintiff was employed as a porter on a Pullman car attached to the train of defendant company, under a contract of employment releasing both companies from liability in case of injuries sustained while in the employ of the Pullman Company. In an action against the defendant railroad for injuries resulting from the negligence of the defendant, he was permitted to recover in spite of his contract. The court, following the case of *Coleman v. Pennsylvania R. R. Co.*, 242 Pa. 304, held that in every case where one, not an employee or trespasser, is carried on a railroad, the undertaking of the railroad is that of a common carrier, and the party, although not a passenger, is, in the ordinary sense of the word, entitled to the rights of a passenger so far as his safe transportation is concerned. The plaintiff, being entitled to the rights of a passenger, the public policy of Pennsylvania forbade the railroad to make any such contract exempting itself from responsibility for its own negligence. *Murray v. Phila. & R. Ry. Co.* (Pa. 1915), 94 Atl. 558.

Upon almost identical facts, a similar contract was upheld as not being against public policy, and held to be a bar to plaintiff's action for injuries sustained through the carrier's negligence. *Robinson v. B. & O. Ry.* (1915), 35 Sup. Ct. 491.

The authorities are not in accord as to the effect of such contracts. Such contracts have been held invalid in *Sewall v. Atchison, T. & S. F. R. Co.*, 78 Kan. 1; *Mo., K. & P. R. R. Co. v. West*, 38 Okla. 581; *Weir v. Rountree*, 97 C. C. A. 500. In some jurisdictions—Kansas, Virginia, Kentucky—such contracts have been declared invalid under statutory or constitutional provisions governing contracts of employment. The decided weight of authority, however, seems to uphold such contracts as not being against public policy, for the reason that a railroad company is not a common carrier in transporting goods for express companies or carrying the cars of the Pullman Company; it acts in the capacity of a private carrier and as such has absolute freedom of contract, and may stipulate for exemption from liability for injuries from its own negligence. *B. & O. etc. Ry. v. Voigt*, 176 U. S. 498; *Perry v. Phila. B. & W. Ry. Co.*, 24 Del. 399; *Express Cases*, 117 U. S. 1. Contracts exempting carriers from liability for injuries to circus employees while transporting a circus have been held valid in *Seger v. Northern P. Ry. Co.*, 166 Fed. 526; *Kelley v. Grand Trunk Western Ry. Co.*, 46 Ind. App. 697; *Cleveland C. C. & St. L. R. R. Co. v. Henry*, 177 Ind. 94. Cases involving express clerks, see: *Voigt Case*, supra; *Blank v. Ill. Cent. Ry. Co.*, 182 Ill. 332; *Louisville etc. Ry. v. Keefer*, 146 Ind. 21. It is questionable whether such contracts would be upheld in the case of mail clerks. There are no

decided cases on this point, for the reason that the government has never made any such contracts. There is dictum to the effect, in *Seybolt v. N. Y., Lake Erie & Western Ry. Co.*, 95 N. Y. 563, that such a contract would not be upheld on the ground that the railroad's obligation to carry mails and those in charge of them, is fixed by statute, and any stipulation of exemption in any contract would be void for the want of authority in the officer representing the government to make it.

CODE PLEADING—COUNTER CLAIM—CONSTRUCTION OF WORD “TRANSACTION.”—Where the plaintiff, who had been general manager of a publishing house, and who by false representations as to the assets of the business had induced the defendant to purchase the business, and who had contracted with the defendant to become the defendant's general manager for a term of years, sued the defendant for breach of this contract of employment, *held*, that the defendant might counterclaim for the damages resulting to him from the plaintiff's misrepresentations. *Laska v. Harris* (N. Y. 1915), 109 N. E. 599.

This counterclaim could be supported only if it was found to be a cause of action arising out of the contract or transaction set forth by the plaintiff as the foundation of his claim, or connected with the subject of the plaintiff's action. NEW YORK CODE OF CIVIL PROCEDURE, § 501. It is generally recognized that a defendant may counterclaim for the plaintiff's fraud in inducing defendant to enter into a contract, for the breach of which the plaintiff is suing. *Isham v. Davidson*, 52 N. Y. 237; *In re Harper*, 175 Fed. 412. The plaintiff's representations are regarded as part of the transaction set forth in the complaint. Likewise the deposit of security for a note is such a part of the transaction set forth in an action on the note as to give rise to a counterclaim by the defendant when the plaintiff has converted the security. *Rush v. First National Bank*, 17 C. C. A. 627; *First National Bank v. O'Connell*, 84 Ia. 377, 51 N. W. 162; *Cass v. Higenbotam*, 100 N. Y. 248, 3 N. E. 189. It is evident that the courts have not attempted to give a technical meaning to the word “transaction,” but have tended rather to construe it according to its ordinary meaning, and with a view of accomplishing the purpose of the Code in simplifying and shortening procedure. Yet it has been held that the facts and events constituting the alleged transaction must bear some legal relation to each other, and mere identity of parties or chronological coincidence will not be sufficient. *Standley v. Northwestern Insurance Co.*, 95 Ind. 254. Accordingly in an action on a partnership note no counter-claim was allowed for the misrepresentations of the plaintiff which induced the defendant to become a member of the partnership. *Daniel v. Gordy*, 84 Ark. 218, 105 S. W. 256. And in a leading New York case, where the vendor of stock in a corporation sued for the purchase price, a counter-claim was not allowed for the misrepresentations of the plaintiff which subsequently induced the defendant to lend money to the corporation. *Story v. Richardson*, 91 N. Y. App. Div. 381. The court in the principal case has evidently accepted a much broader construction of the word “transaction” than did the courts deciding these two cases. In all three cases the legal right, upon which the defendant's cause of action was founded, arose from an act